

Department of Ecology

Presentation to Water Resource Mitigation Task Force

Water Right Transfers, Water Banking, and Private Investment in Public Water Resources

September 21, 2021

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Water right transfers

RCW 90.03.250: Any person, municipal corporation, firm, irrigation district, association, corporation or water users' association hereafter desiring to appropriate water for a beneficial use shall make an application to the department for a permit to make such appropriation

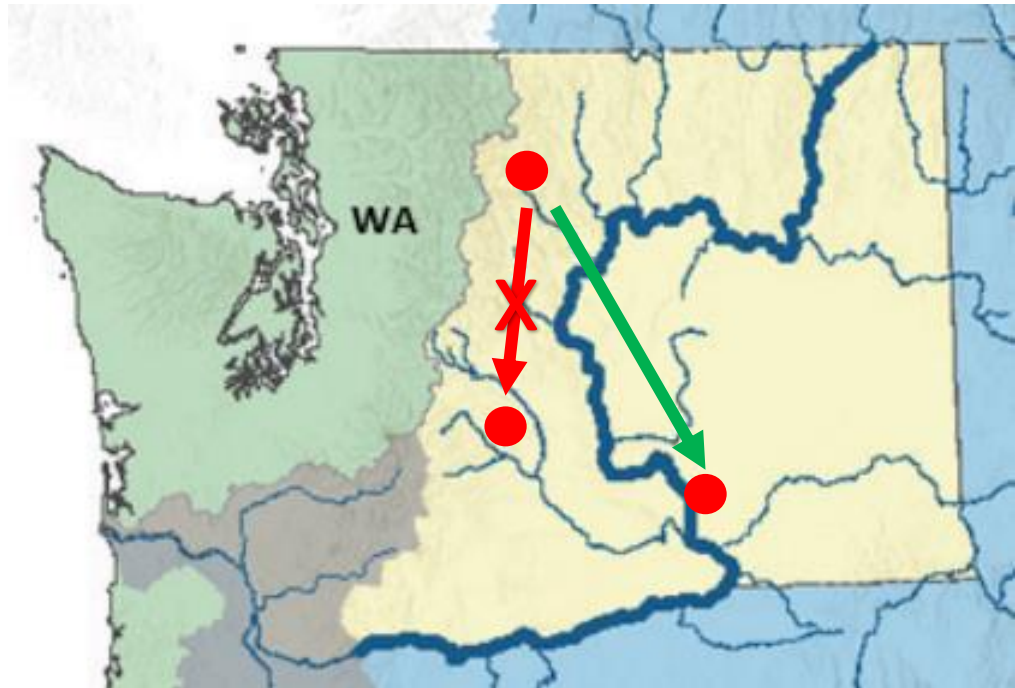
RCW 90.03.380: (1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights.

- **Part of the initial adoption of the water code in 1917.**



Out-of-basin transfers

- Changing the place of use (or point of diversion) from one WRIA to another downstream WRIA
- NOT the same as “inter-basin” transfer
- Transferring a water right is not the same as piping water from one location to another



Trust water rights

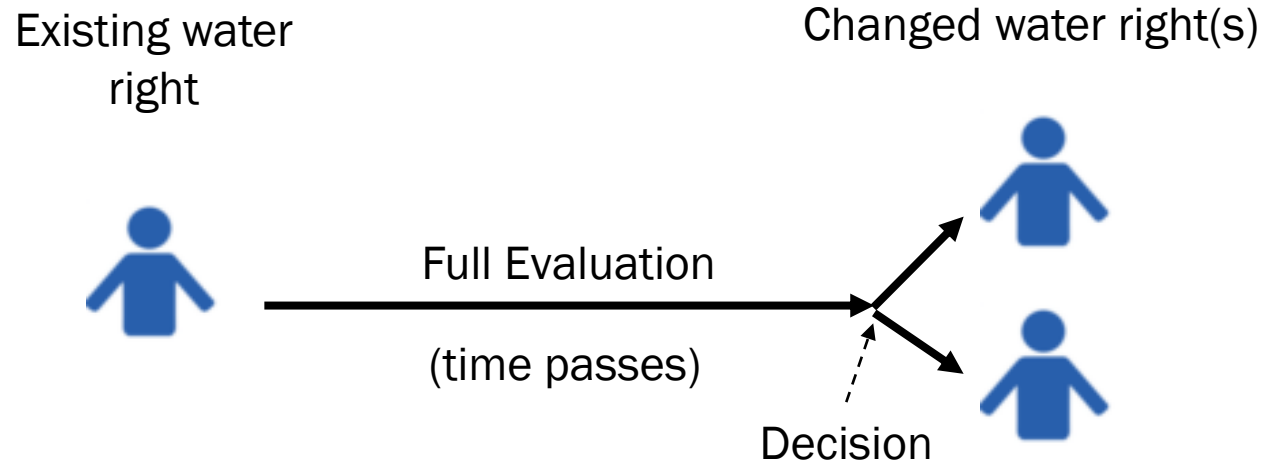
RCW 90.42.110(3) A trust water right retains the same priority date as the water right from which it originated

RCW 90.42.110(6) RCW [90.14.140](#) through [90.14.230](#) have no applicability to trust water rights held by the department under this chapter or exercised under this section.

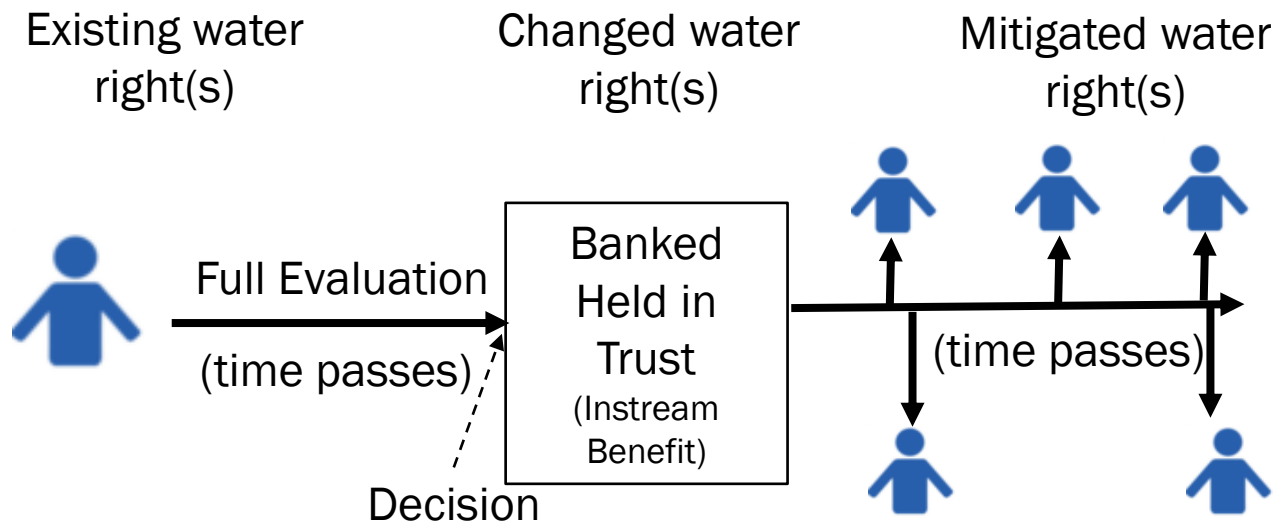
RCW 90.42.110(2) An application to transfer a water right to the trust water [rights] program shall be reviewed under RCW [90.03.380](#) at the time the water right is transferred to the trust water [rights] program for administration for water banking purposes.... The application must... identify reasonably foreseeable future temporary or permanent beneficial uses for which the water right or portion thereof may be used by a third party upon transfer from the trust water right[s] program.



Transfers without banking



Transfers using state trust (water banking)



Initial concerns and response

Wall Street spends millions to buy up Washington state water

October 27, 2019 at 6:00 am | Updated November 1, 2019 at 6:48 pm



1 of 10 Don Lundgren's family ranch sits next to the Chewuch River. Lundgren hoped to sell water rights to Crown Columbia for...

By **Evan Bush** 
Seattle Times staff reporter



Water Trust, Banking, and Transfers in Washington State

Findings and Recommendations Informed by Ecology's Advisory Group on Water Trust, Banking, and Transfers

By
Carrie Sessions and Dave Christensen

Water Resources Program
Washington State Department of Ecology
Olympia, Washington

November 2020, Publication 20-11-091



2021 Legislative Directive

Sec 302(31)(b): The department must build off its work ...to refine recommendations on **improving the state's framework for water banking, water trust, and water right transfers**. Recommendations should address issues of private investment in water banking and the merits of incentives and regulations pertaining to the out-of-basin transfer of water rights.

In refining its recommendations, the department shall **consult with tribes** and **consider input from stakeholders** with expertise in water banking.

- Update to the Legislature by Dec 31, 2021.
- Report to the Legislature by Dec 31, 2022.



Work in progress

- **Draft trust water policy:** public comment period just completed
- **New forms:** request to create a water bank to improve transparency
- **Web site redesign:** to allow easier public access to information
- **Ongoing policy discussions:** held tribal and stakeholder meetings during 2021
- **Drafting update to legislature:** due December 31, 2021



Water banking grant program

- A total of \$15 M provided to Ecology in FY21-23 biennial budget for creation of a grant program for local governments to develop water banks:
 - Rural counties with headwaters of significant rivers
 - For acquisition of water rights and administering a water bank
 - One-third of acquired water must remain in-stream and cannot be reallocated
- We anticipate grant solicitations to open in November
- Website: <https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-rights/Water-banks/Water-banking-grants>

Ongoing issues

- **Transfers downstream (out of basin):** concerns about negative impact to local communities
- **Speculation (or monopoly power):** protection from relinquishment for banked water rights is too broad
- **Conservation incentive:** any restrictions on trust water reduces incentive to conserve water and may result in lower streamflows
- **Public interest:** when and how we evaluate for public interest conflicts; how to define public interest
- **Reallocation framework:** water banking promotes water reallocation and takes pressure away from issuing new water rights; should be promoting banking more

Questions?



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